IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 399 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOMARAM SOMARAM JAT

Versus

U H PATEL

Appearance:

MRS SHILPA J UNWALLA for Petitioner

MR SP DAVE ADDL PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 12/08/1999

ORAL JUDGEMENT

#. Rule. Mr. S.P.Dave, learned APP waives service of rule on behalf of respondents.

#. Heard Mrs.Unwala, learned advocate for the revisioner and Mr.S.P.Dave, learned APP for the State. The revisioner herein challenges the order passed by the learned Additional City Sessions Judge below application Exh.80 in Session Case No : 175 of 1998 pending before

him. The present petitioner is the accused in that session case and is being tried for offences under Narcotic Drugs and Phychotropic Substances Act, 1985 (the `NDPS Act' for short). During the course of trial, the application came to be tendered on behalf of the applicant objecting to taking on record and statement recorded under Section 67 of the NDPS Act and praying for not exhibiting that document on the ground that the summon seems to have been issued under Section 53(1) of the NDPS Act, whereas the statement sought to be to be recorded purports to be under Section 67 of the NDPS Act and therefore, it cannot be taken on record unless condition as contemplated under Section 53(A) are fulfilled. The learned Additional City Sessions Judge after hearing both the sides passed the impugned order dated 25th June, 1999 rejecting the application. The learned Additional City Sessions Judge dealt with the arguments advanced on behalf of the accused revisioner and ultimately observed that the statement is relevant and it is therefore to be taken on record, but that does not mean that it is a `gospel piece' but it has to be considered under which circumstances and it is recorded in whose presence which was recorded and under which circumstances persons making was placed. The question of evidential value has to be assessed at the time of final arguments and then ultimately rejected the application.

#. Mrs. Unwala submitted that the revisioner challenges this order for the reasons that an important right of the accused is adversely affected by admitting this document on record. She says that the right of the accused of challenging the admissibility of the document is finally concluded by the learned Additional Sessions Judge and therefore the revision application is maintainable. On merits, she submitted that the summons is very craftily drafted. On one hand, it speaks of Section 53(1) of the NDPS Act, on the other hand, a picture is tried to be created that it is summons under Section 67 of the NDPS Act and therefore, an attempt is made to take undue advantage of both the provisions to the detriment of the accused and therefore, this revision application may be entertained and the impugned order may be set aside.

#. Mr.Unwala has placed reliance on following decisions.

(i) V.C.Shukla Vs. State through CBI AIR 1980 SC 962
(ii) Amarnath & State of Hryana, 1977 Criminal Law Reporter (S.C.) 366
(iii) Madhu Limya Vs. State of Maharashtra AIR 1978 S.C. 47

(iv) Hasmukh J. Jhaveri vs. Shella Dadlani & another
1981 Criminal Law Reporter 958.

#. Mr.Dave, learned APP submitted that it is amply clear from the summons that the first reference to Section 53(1) is only in respect of the powers with which the summoning officer is invested and if the last paragraph of the summon is read, there is no scope for any other interpretation but that it is a summons under Section 67 of the NDPS Act. Therefore, there is no need to entertain this petition. On question of admissibility of evidence, as learned Additional City Sessions Judge in his order has also observed that admission of the document by itself is not a "gospel piece" but it will be decided on the touch stone of evidential value as any other piece of evidence. In this view of the matter, Mr. Dave, learned APP urged, that the revision application may be rejected. He has relied upon the decision of the Hon'ble Apex Court in the case of AMARNATH VS. STATE OF HRYANA AIR 1977 SC 2185.

#. Having regard to the rival side contentions, it becomes necessary to reproduce the disputed portions of the summon which are attacked most by the revisioner i.e. the first and last paragraph.

"WHEREAS an enquiry in connection with the seizure of Brown Powder from Shri Gomaram Sonaram on 13th April, 1998 under the provisions of the Narcotics Drugs and Psychotropic Substances Act, 1985 is being conducted by the undersigned under Section 53(1) of the said Act."

"Accordingly, you are hereby directed by the undersigned the powers vested in him under Section 67 of the NDPS Act, 1985 to appear before him in persons for such examination in the Forenoon of 13th April, 1998 at 6th Floor, Screen Building, Drive-in-Cinema, Thaltej, Ahmedabad."

#. If the first paragraph of the summon is seen, it is clear that it is in the nature of the introduction informing the addressee that the summoning officer is conducting an inquiry as is empowered under Section 53(1) of the said Act. Section 53(1) of the NDPS Act runs as under;

"(1) The Central Government, after consultation with the State Government, may, by notification published in the Official Gazette, invest any officer of the department of central excise,

narcotics, customs, revenue intelligence or Border Security Force or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offences under this Act."

#. This Section deals only with details regarding investing of powers in certain officer of certain department by the Government with the powers of officer in charge of a police station and therefore, the first paragraph is only a introductory paragraph and therefore, it cannot be said that it would attract the provisions of Section 53-A.

#. Likewise, if the last para of the summon quoted above is seen, it clearly states that the addressee is summoned in the forenoon of 13th April, 1998 at the given address under powers vested in the summoning officer under Section 67 of the NDPS Act. This being so, it is not possible to make any other interpretation then to interpret that this is summon under Section 67 of the NDPS Act. There is no confusion between the powers under Section 53(1) of the NDPS Act and Section 67 of the NDPS Act as is tried to be shown on behalf of the revisioner.

##. Further Section 53-A of the NDPS Act provides that the statement made and signed by person before any officer empowered under Section 53 for investigation of offences, shall be relevant. Likewise, it is now settled proposition of law that statement under Section 67 also should be relevant and admissible in evidence. In this view of the matter, this Court finds no error in the impugned order admitting the statement to evidence.

##. Now another aspect that requires to be considered is whether impugned order is assailable by preferring this revision. It is found that the order is of purely introductory nature. Admitting the document to evidence does not necessarily mean that that document is presumed to be correct, trustworthy and of chaste evidential value. Even the learned Additional City Sessions Judge has also observed that the question of its reliability or otherwise, and its evidential value will be assessed at the time of final argument and it would be open in the argument for the parties to assail the statement at the relevant stage. In this view of the matter, mere admission of the document in evidence cannot be said to have affected the interest of the revisioner permanently. Reliance is placed on several decisions to assail this order and to show that the revision is maintainable. In V.C.SHUKLA (Supra) 1986, what is interlocutory order has

been discussed by the Honourable Supreme Court and it has been observed that the interlocutory order merely decides some point or matter essential to the progress of the suit or collateral to the issue sought but not final decision or judgment on the matter in issue. In the instant case, by admitting the document to evidence, it cannot be said that a decision is taken finally affecting the interest of revisioner. Likewise, reliance was placed on the decision in the case of AMARNATH, AIR 1977 SUPREME COURT 2185, there also, word interlocutory has been interpreted, Their Lordships observed that any order which substantially affects right of the accused, or decides certain rights of the party cannot be said to be a interlocutory order so as to bar a revision to the High Court against that order because that would be against very object which formed the basis for insertion of this particular provision in Section 397 of the Code. Admission of the statement in the case before this Court, cannot be said to have substantial right of the accused / revisioner as the question of its trustworthiness or otherwise is kept open by the learned Additional Sessions Judge. Lastly reliance was placed on decision of Bombay High Court in case HASMUKH J. JHAVERI V. SHELLA DADLANI 1981 Criminal Law Journal 958. It was argued that an order which decides or even touches the important right or liability of the party cannot be said to be interlocutory. Again right is not conclusively decided by the trial Judge. No prejudice is caused to the interest of the accused permanently and therefore, this decision will not help the revisioner.

##. Mr.Dave, learned APP has placed reliance on the decision of the Hon'ble Apex Court in the case of AMAR NATH, AIR 1977 SC 2185, in para 6 of the last portion, Their Lordships observed that;

> "... Thus, for instance, order summoning witnesses, adjourning cases, passing order for bail, calling for reports and such other steps in aid of the pending proceedings, may no doubt amount to interlocutory orders against which no revision would lie under Section 397 (2) of the 1973 Code. .... "

##. In this view of the situation, this Court is of the view that the order in question is an interlocutory order.

##. In view of above discussions, revision must fail on both the counts, on merits as well as on question of jurisdiction and the same is therefore dismissed. Rule

discharged.

Date : 12-8-1999 [A.L.Dave, J.]

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